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Insights

SECURE Act 2.0 Expands on 2019 Secure Act Retirement Provisions

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The SECURE Act 2.0 of 2022, arguably one of the most significant pieces of legislation affecting retirement plans in many years, was signed into law by President Biden on December 29, 2022 with the **2023 Consolidated Appropriations Act**. Several provisions and requirements went into effect immediately or will go into effect within the next twelve months, others will not go into effect for a few years. All plan sponsors will likely be impacted by at least some aspect of the SECURE Act 2.0, so awareness of key provisions and their respective effective dates will help employers and participants plan accordingly and avoid missed opportunities or unintended consequences.

A few of the key provisions that went into effect immediately or will within the next 12 months include:

- Increasing tax credits to employers with 50 employees or less to offset the start-up costs of installing a new retirement plan, for plans beginning after December 31, 2022, plus additional credits for employer contributions to the plan over the first five years of a plan's existence
- Increasing the required beginning age for Required Minimum Distributions ("RMDs") to age 73, effective January 1, 2023, for participants who attain age 72 on or between January 1, 2023 and December 31, 2032
- Increasing to age 75, effective January 1, 2033, for participants who attain age 74 after December 31, 2032
- Reducing the tax penalty to a participant who missed the deadline to receive his or her RMD from 50% to 25% of the missed RMD amount for tax years beginning after December 29, 2022
- Allowing plan sponsors to "match" a participant's student loan repayments for plan years beginning after December 31, 2023
- Increasing the amount a plan sponsor can "force out" of the plan from $5,000 to $7,000, effective for distributions made after December 31, 2023

Other provisions of the SECURE Act 2.0 not set to go into effect until later years include:

- Requiring new 401(k) and 403(b) plans to include automatic-enrollment and automatic-escalation features, with a minimum deferral rate of 3% and the ability for the participant to opt-out of the plan
- Developing a database of retirement accounts, maintained by the Department of Labor, for participants to search and locate accounts in prior employers' retirement plans

- Broadening the types of errors that can be corrected through the Employee Plans Compliance Resolution System
- Allowing shareholders selling to an S Corp ESOP to use IRC 1042 gain deferral, with a 10% limit on the deferral

As more guidance is issued on SECURE Act 2.0, Krieg DeVault's **Employee Benefits & Executive Compensation Practice** will deliver the information that is relevant to your retirement plan and business. If you have any questions or would like to discuss this latest article in more detail, please contact **Lisa A. Durham** or another member of the group. Please stay tuned for more details.

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